

DOCKET # 02-76 COPY ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

DEC 31 2003

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Crisfield, Maryland, Belle Haven, Nassawadox,)
Exmore, and Poquoson, Virginia)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MB Docket No. 02-76
RM-10405
RM-10499

To Assistant Chief, Audio Division
Media Bureau

**REPLY TO CONSOLIDATED RESPONSE
TO PETITIONS FOR RECONSIDERATION**

Tidewater Communications, LLC ("Tidewater"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby files its reply to the Consolidated Response to Petitions for Reconsideration filed December 17, 2003, by Commonwealth Broadcasting, L.L.C. and Sinclair Telecable, Inc. dba Sinclair Communications (jointly referred to herein as "Sinclair"). Tidewater and Bay Broadcasting, Inc. ("Bay")¹ sought reconsideration of the Report and Order of the Audio Division, *Crisfield, Maryland, Belle Haven, Cape Charles, Exmore, Nassawadox, and Poquoson, Virginia*, DA 03-2980, released September 25, 2003 (*R&O*)². In reply to Sinclair's Response, the following is shown³.

¹ Bay is licensee of WBEY(FM), Channel 245A, Crisfield, Maryland. Sinclair's response takes no position on the Bay petition except to state that it has no objection to the allotment of either Channel 252A or 252B1 in lieu of Channel 250B1 at Belle Haven, Virginia. Although Sinclair claims it is taking no position on the matter, it most certainly is. *Tidewater has shown, and amplifies herein on its showing, that Belle Haven is not a community for allotment purposes.* Bay's original proposal to substitute Channel 250A for Channel 245A at Crisfield, Maryland, should be granted and Sinclair's proposal should be denied on reconsideration.

² Published 68 Fed. Reg. 67441 (December 2, 2003).

³ This Reply is timely filed by December 31, 2003. Section 1.429(g) of the Rules affords parties 10 days to file a reply from the date on which the opposition is due. Since Sinclair's Response was served on

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I. Preliminary Matter: Sinclair Has Failed Properly to Respond to Tidewater's Petition in MM Docket No. 02-76

Sinclair has failed to file in this docket any responsive pleading to either Tidewater's or Bay's petitions for reconsideration. This proceeding is MM Docket No. **02-76**, Rule Making Numbers RM-10405 and RM 10499. The caption on Sinclair's response references MM Docket No. **02-141**, Rule Making Number RM-10428, a proceeding that was dismissed at Sinclair's request in 2002.⁴ As Sinclair has failed properly to file any opposing pleading in this docket, Tidewater and Bay's petitions should be deemed unopposed. However, like Sinclair, "in an abundance of caution," Tidewater herein replies on the merits.⁵

II. Tidewater's Petition for Reconsideration

Sinclair filed its counterproposal simply to create mutual exclusivity with Bay's Crisfield proposal. Sinclair's real goal was never Belle Haven, it was always to move a new radio station into the Norfolk Arbitron market.⁶ Sinclair no doubt expected opposition to its plan, so it filed it as a counterproposal to deny others the right they would have had to file counterproposals against an initial proposal. Sinclair had an obligation, if it chose such a risky plan, to comply with the Commission's rules and policies by filing a technically correct proposal, but it failed to do so. Tidewater in its pleadings showed that Sinclair's Counterproposal was defective and therefore could not be granted. Nonetheless, the Audio Division allowed Sinclair to amend its counterproposal. To make the untenable tenable, the Audio Division, in violation of the

counsel by mail December 17, 2003, Section 1.4(h) of the Rules provides an additional 3 days (excluding holidays) for filing this reply.

⁴ See Report and Order, 17 FCC Rcd 20097 (2002).

⁵ Tidewater notes that counsel's transmittal letter references the correct docket and rulemaking numbers, but the pleading itself does not.

⁶ Sinclair has filed an application to relocate WKOC, formerly WWEXM, to a tower used by Sinclair's WNIS, Norfolk, Virginia.

Commission's Rules, relied on non-government maps to conclude that Sinclair's counterproposal met FCC spacing requirements. Tidewater sought reconsideration of the *R&O* on a number of grounds. In short, the *R&O* should be reversed because the Audio Division (1) granted Sinclair's defective counterproposal even though the allotment site for the use of Channel 291A at Poquoson was over water as plotted on a 7.5 minute USGS topographic map; (2) found that the site was on dry land based on the use of commercial non-government maps, (3) improperly corrected Sinclair's defective counterproposal by changing the reference coordinates to a site that was on dry land, and (4) considered Sinclair's 162-page supplement to its defective counterproposal. Tidewater herein responds to each of Sinclair's arguments and shows that the action taken in the *R&O* should be reversed.

A. The Commission Must Rely on U. S. Government Topographic Maps which Show that the Reference Site for Poquoson Is Over Water and the Counterproposal Is Defective as a Result

The Counterproposal Was Defective When Filed. The reference site Sinclair specified for the proposed allotment of Channel 291A at Poquoson, Virginia, is North Latitude 37° 12' 30" and West Longitude 76° 25' 05" ⁷ Tidewater, relying on USGS maps, showed that the intersection of the coordinates is clearly offshore within a body of water-- rendering the site unsuitable. The *R&O* ignored established precedent that prohibit an offshore transmitter site.⁸ The *R&O* failed to dismiss Sinclair's defective counterproposal, instead, relying on a commercial map, the Commission concluded that the site was on dry land. In addition, the Audio Division specified new reference coordinates for Channel 291A at Poquoson, that,

⁷ These coordinates are also listed on the Commission's July 1, 2002, Public Notice.

⁸ *Clewiston, Fort Myers Villas, Indiantown, Jupiter, Key Colony Beach, Key Largo, Marathon and Naples, Florida*, 10 FCC Rcd 6548 (1995), *St. Maries, Idaho and Spokane, Washington, inter alia*, 14 FCC Rcd 17012 (1999), and *Creswell, Oregon*, 4 FCC Rcd 7040 (1989).

indisputably are on dry land. Sinclair's selection of offshore coordinates was a fatal defect since Sinclair could not amend its proposal to attempt to specify a different site, but the *R&O* ignored the well-established rule that counterproposals must be technically correct and substantially complete when filed.⁹ The *R&O* stated that the Audio Division did "not have to face the issue that Tidewater has attempted to raise in this proceeding," and inexplicably permitted Sinclair to patch up its counterproposal because Tidewater "questioned" Sinclair's showings.

In numerous other cases, the Commission has not hesitated to dismiss a counterproposal because it was not technically correct at the time it was filed. See *Saint Joseph, Clayton, Ruston and Wisner, Louisiana*, 18 FCC Rcd 22 (2003) (counterproposal dismissed because the proposed allotment was short-spaced to a pending, cut-off, proposal where a request to withdraw the proposal had not been acted on by the counterproposal date), *Lincoln, Osage Beach, Steelville, and Warsaw, Missouri*, 17 FCC Rcd 6119 (2002) (counterproposal dismissed because the counterproposal was unverified). In *Lincoln, et al*, the Commission indicated that the acceptance of the unverified counterproposal would prejudice another party. The Commission was careful to distinguish pre-1990 cases where it waived its rule because there was no actual prejudice caused by acceptance of the cured counterproposals. Here, the *R&O* explicitly rejected Bay's proposal because of transmitter site deficiencies and ignored Tidewater's arguments that the Sinclair counterproposal must be dismissed as defective.

The Decision in the *R&O* Is Based on a Commercial Map. A portion of the *R&O* was based on an error in fact. At *R&O* paragraph 7, it was determined that the transmitter site is on "dry land," by "using detailed maps and other relevant material from the United States Geological Survey (USGS) internet site (www.usgs.gov). These materials include a topographic

⁹ Section 1.420 (d) of the Commission's Rules, *Broken Arrow and Bixby, Oklahoma*, 3 FCC Rcd 6507 (1988) and *Springdale Arkansas et al*, 4 FCC Rcd 674 (1989), *recon*, 5 FCC Rcd 1241 (1990)

map and a navigational photo of the area designated as Sinclair's transmitter site at reference coordinates of 37-12-30 North Latitude and 76-25-05 West Longitude [footnote omitted] They clearly show that the reference site is on dry land." Tidewater has consistently argued that Section 73.312 of the Commission's rules require the use of 7.5 minute USGS topographic maps in locating transmitter sites. Sinclair at paragraph 10 of its Response says, "And, even if applicable to an allocations issue of this nature, Section 73.312(a) expressly mandates the use of the USGS or other governmental maps, "whichever is latest" [emphasis in original]

The decision in the *R&O* was not based on the examination of USGS or other governmental maps. Attached hereto as Exhibit A is a copy of documents provided by the Commission in response to Tidewater's Freedom of Information Act request for the materials the Audio Division reviewed in making its determination that Sinclair's site was on dry land. Those materials are copies of maps printed from a commercial website, "maptech.com" ¹⁰ They are not governmental maps.

In further support of its arguments that the Commission must rely only on the USGS maps, Tidewater attaches as Exhibit B and Exhibit C the declarations of two experts in mapping. Exhibit B is the declaration of Donald W. Shackelford of Rouse-Sirine Associates, Ltd. Mr. Shackelford, a licensed surveyor, using the USGS 7.5 minute topographic map confirms that Sinclair's site appears to lie within water. Mr. Shackelford also states that the commercial electronic maps used by the Commission "do display some error at some of the grid tick marks. The plotted position on a paper copy of the 7.5 minute topographic map does appear to be

¹⁰ <http://mapserver.maptech.com/homepage/index.cfm?lat=37.208248&lon=76.418263&sc> Sinclair at paragraphs 9-10 of its Response acknowledges that it reviewed MapTech Map Server, to view and locate the site. However, Sinclair claims that the site is a USGS website, when, in fact, it is a commercial website.

approximately 100' eastward from the position as shown on the mapserver.maptech.com site.”

Exhibit C is a letter received from Dr. David F. Maune, a Mapping and Remote Sensing Consultant. Dr. Maune also states that the reference site is “slightly in the water.”¹¹

In light of the foregoing, Section 73.312(a) of the Rules required the use of a 7.5 minute USGS map to locate the Sinclair site, resulting in a finding that the site was over water as depicted on that map, and a determination that Sinclair’s counterproposal was not technically correct and substantially complete on the date it was filed.¹²

The Commission Should Not Have Changed the Reference Site. It was prejudicial to Tidewater for the *R&O* to change Sinclair’s reference site, under the circumstances. Sinclair refers to the cases in *R&O* fn16¹³ for the proposition that the Commission has the discretion to “adjust” site coordinates. However, the cases are distinguishable. The *Streamlining* order is inapposite because it deals with the filing of applications to correct coordinates. As an example of this disconnect, as mentioned *supra*, Sinclair filed an application to use the WNIS, Norfolk, Virginia, tower for WKOC, but that site would not be usable as an allotment site because it is short spaced. The site changes permitted in *Moncks Corner, Kiawah Island and Sampit, South Carolina, Randolph and Brandon, Vermont*, and *Gregory, Alice and Armstrong, Texas*, did not permit the proponent to correct a defective counterproposal. As discussed herein, a

¹¹ Tidewater requests that the Audio Division consider these documents under Section 1.429(b)(3) of the Rules which allows new matters not previously presented to the Commission to be considered if the Commission finds that such consideration is in the public interest. See *Moncks Corner, Sampit and Kiawah Island, South Carolina, supra*.

¹² Sinclair has nobody to blame but itself for this situation. It could have found a site on dry land and specified it. The Audio Division should not reward Sinclair’s carelessness.

¹³ *Streamlining of Radio Technical Rules*, 15 FCC Rcd 21649 (2000), *Moncks Corner, South Carolina, et al.*, 15 FCC Rcd 8973 (2000), *Randolph and Brandon, Vermont*, 6 FCC Rcd 1760 (1991), and *Rockport, Texas et al.*, 4 FCC Rcd 8075 (1989).

counterproposal must be technically correct at the time it is filed, otherwise it will be dismissed as defective

The Audio Division Should Not Have Considered Sinclair's Supplement. At footnotes 4 and 5 of the *R&O*, the Audio Division granted Sinclair's "Motion for Leave to File a Response and Response to Tidewater's Comments" and a "Motion for Leave to File a Further Response to Tidewater's Opposition and Further Response." The only reason given was "for good cause shown and in order to assure a complete record." It was error for the Audio Division to consider the 162-page supplement filed by Sinclair to patch up its defective counterproposal. No authority was cited to support the Audio Division's action. A counterproposal must be technically correct at the time it is filed. A party cannot amend its counterproposal to correct a clearly defective proposal.

B. Belle Haven, Virginia, Is Not a Community for Allotment Purposes

Sinclair declares "inapposite" Tidewater's reliance on *Gretna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (1991), *Crestview and Westbay, Florida*, 7 FCC Rcd 3059 (1993) and *Pike Road and Ramer, Alabama*, 10 FCC Rcd 10347 (1995). However, it was error when the *R&O* did not even discuss Tidewater's argument that the Commission should not in a vacuum find that Belle Haven is a community for allotment purposes just because it is incorporated. Tidewater rebutted the presumption that Belle Haven is a community for allotment purposes by showing that Belle Haven is incorporated in name only, with a part-time mayor whose office is at the local fuel store; a place with apparently only four operating businesses, that provides no municipal services, and the Audio Services Division should reverse its finding on reconsideration.

C. Poquoson Is Not Entitled to a First Local Service Preference

Despite Sinclair's selection of Poquoson as a community lacking "first local service", as Tidewater has repeatedly argued, this is nothing more than a proposal to add the **40th** signal to the already over-radioed Norfolk Arbitron market. Tidewater's allegations have recently been confirmed by Sinclair's filing of an application (File No. BPH-20031202AAZ) to relocate WKOC to Poquoson. Collocating the proposed transmitter site for WKOC with another of Sinclair's stations, WNIS(AM), Norfolk, Virginia, could be no better evidence that Sinclair's specification of Poquoson as the city of license for WKOC is a sham.¹⁴

Sinclair disagrees that *Fairfield and Norwood*, Ohio, 7 FCC Rcd 2371 (1992) is controlling on the issue of whether Poquoson is entitled to a preference for first local service over Cape Charles on Section 307(b) grounds. This significant case was ignored. The Commission refused to make the reallocation of Channel 235B from Fairfield, Ohio, to Norwood, Ohio, because it found that Norwood was completely surrounded by Cincinnati, Ohio, which, at the time had 17 local services. Sinclair claims that Poquoson is different from Norwood, *inter alia*, because it borders only Hampton, Virginia, and not the other Tidewater Virginia communities of Norfolk, Portsmouth, Chesapeake or Virginia Beach. But Sinclair does not reveal that it has proposed to locate its transmitter site, not in Poquoson, but on the tower of WNIS in Norfolk. The Commission refused to make the Norwood reallocation because it would be removing a second local transmission service from Fairfield in order to provide an eighteenth such service to the Cincinnati Urbanized Area. Here, as demonstrated by Sinclair's conduct in locating its transmitter site on the tower of a Norfolk, Virginia, AM station, the Commission would be

¹⁴ In order to accomplish the move-in to the Norfolk market, Sinclair first had to allot a new channel to the hamlet of Belle Haven, Virginia, and relocate Sinclair's station WKOC from Cape Charles to Exmore, Virginia. Sinclair's application (File No. BPH-20031202AAU) implementing the change of channel and community of license was filed on December 2, 2003.

removing the only commercial radio station from Cape Charles, Virginia, to add a 40th service to the Norfolk/Hampton/Newport News Urbanized Area. The Audio Division should reverse the *R&O* on this ground alone

D. Sinclair's Proposal Eliminates the Only Commercial Station in Cape Charles

Tidewater reiterates its argument that Sinclair's proposal to eliminate the only commercial service in Cape Charles does not constitute a preferential arrangement of allotments under *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Although it is true that noncommercial FM stations are relevant for purposes of Section 307(b) analyses, the Commission must consider the legitimate expectation of the residents of Cape Charles that service from WKOC will continue. Contrary to the position taken by the *Decision in the R&O* in the *R&O*, WAZP is not an adequate substitute for the removal of WKOC from Cape Charles.

E. Miscellaneous Matter

Sinclair argues that Tidewater has failed to meet certain standards to be successful on reconsideration, i.e., must rely on new facts, changed circumstances, or material errors in the underlying opinion. Sinclair ignores the plain language of Section 1.429 (b) that admonishes parties that a petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under certain circumstances. In this case, since the Audio Division ignored or failed to grant even one of Tidewater's grounds for relief, it was necessary to address each and every argument made previously in order to preserve Tidewater's rights to future review by other authorities. That Sinclair doesn't care for Tidewater's style in presenting the arguments is of no moment and does not adversely affect Tidewater's petition. Sinclair cites *City of Waukesha v. EPA*, 320 F.3d 228, 257-258 (D. C.

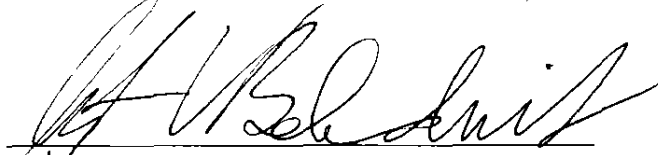
Circuit 2003) and *Sprint Corporation v FCC*, 331 F 3rd 952, 960 (D. C. Cir 2003) *City of Waukesha* supports Tidewater's position. Sinclair's cases stand for the principle that reconsideration is warranted where the petitioner has cited error of fact or law or has presented facts or circumstances which raise substantial or material questions of fact that would otherwise warrant review. Tidewater believes it has most certainly met that burden.

III. Conclusion

As Sinclair's counterproposal was defective when filed, it should have been dismissed and the competing proposal of Bay to exchange Channel 250A for Channel 245A at Crisfield, Maryland, should have been granted. Moreover, the Audio Division should reconsider its action in removing the only commercial station from Cape Charles to allot the 40th service to the Norfolk/Virginia Beach/Newport News Urbanized Area.

Respectfully submitted,

TIDEWATER COMMUNICATIONS, LLC


for Gary S. Smithwick
Its Attorney

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, DC 20016
202-363-4560

December 31, 2003

Exhibit A



Federal Communications Commission
Washington, D.C. 20554

NOV 19 2003

Gary S. Smithwick, Esquire
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016

Dear Mr. Smithwick:

This is in reference to the Freedom of Information Act request (FOIA Control No. 2004-012), whereby you seek copies of the materials from the United States Geological Survey (USGS) internet site that were relied upon by the Media Bureau's Audio Division in MM Docket No. 02-76 to determine that a specified transmitter site is on dry land.

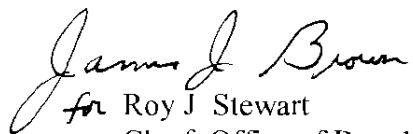
Pursuant to your request, the office files maintained by the Audio Division with respect to MM Docket No. 02-76 were reviewed. That records search, however, did not locate either the USGS topographic map or navigational photo at the site reference coordinates of 37-12-30 North Latitude and 76-25-05 West Longitude. In determining that the site is on dry land, the staff engineer did not generate either document. Rather, he reached his conclusion by viewing the reference coordinates displayed on the USGS topographic map and navigational photo on-line at the USGS internet site.

The Freedom of Information Act creates a right of access to existing documents or other written materials in the possession and control of an agency. It does not require an agency to prepare or generate documents in response to a FOIA request. See Hudgens v. IRS, 620 F. Supp. 18 (D.D.C. 1985), aff'd, 808 F.2d 137 (D.C. Cir. 1987). Notwithstanding the above, we have in the exercise of our discretion accessed again the USGS internet site, plotted the site reference coordinates, and generated the materials that you requested. Copies of the USGS topographic map and navigational photo are enclosed for your information and use.

Pursuant to Section 0.470(a)(1) of the Commission's Rules, commercial use requesters, such as yourself, are assessed charges that recover the full direct cost of searching for, reviewing and duplicating records sought pursuant to the Freedom of Information Act. The search and review costs associated with FOIA 2004-012 amount to \$44.50, the fee for one hour of search time by a GS-13 Electronics Engineer, pursuant to Section 0.467(a) of the Commission's Rules. The charge for duplication of the records being furnished to you is \$0.34 (2 pages @ 17 cents per page, as set forth in Section 0.465(c)(2) of the Commission's Rules). Accordingly, the total charge for processing your FOIA request and furnishing copies of Commission records is \$44.84. The Financial Management Division, Office of Managing Director, Federal Communications Commission, will send you a bill for that amount in the near future. Payment by you remittance made payable to the Federal Communications Commission is due 30 days after receipt of the bill.

I trust the foregoing is responsive to your request.

Sincerely,

A handwritten signature in cursive script that reads "James J. Brown". The signature is written in black ink and is positioned above the typed name and title.

for Roy J. Stewart

Chief, Office of Broadcast License Policy
Media Bureau

Enclosures

Navigational Photo

Maptech MapServer - Online Topo Maps, Nautical Charts, Aero Charts, and Nav Photos

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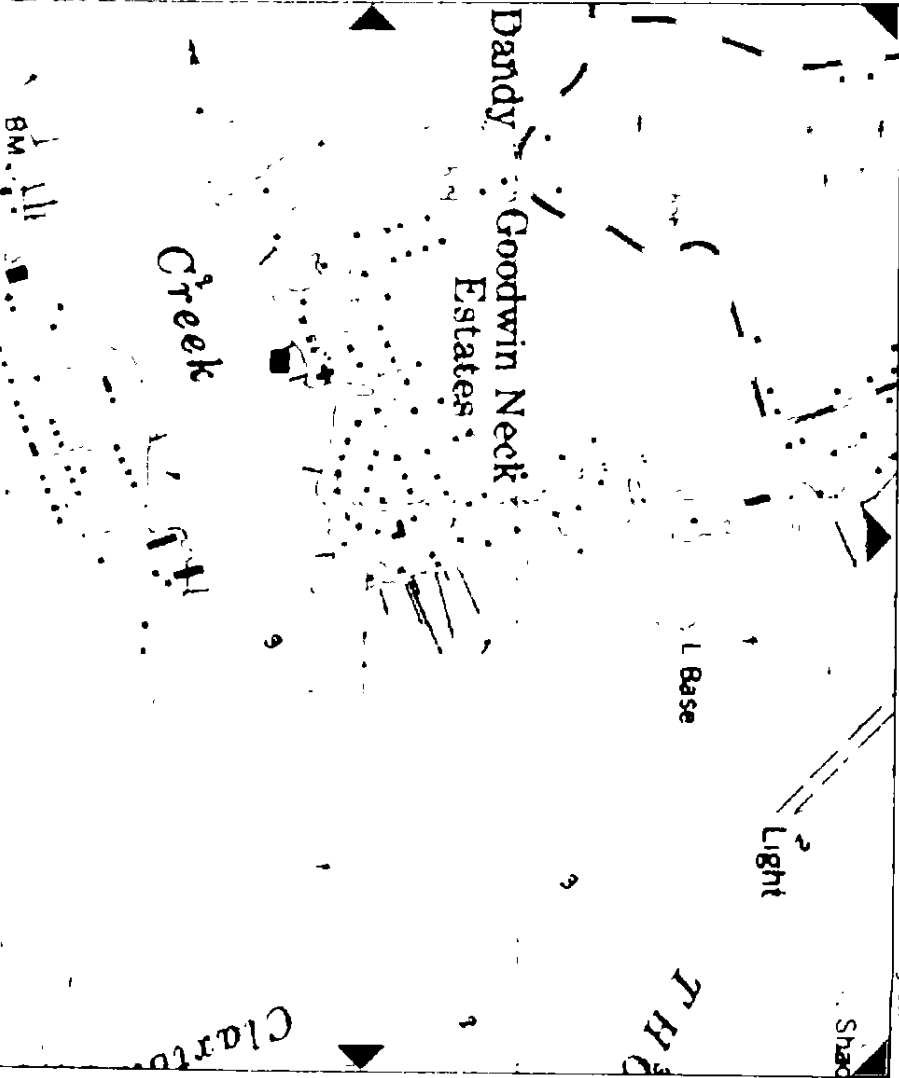
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Exhibit B

DECLARATION OF DONALD W. SHACKELFORD

Donald W. Shackelford, under penalty of perjury, declares.

I am a licensed surveyor employed by Rouse-Sirine Associates, Ltd., Surveyors & Mapping Consultants, 333 Office Square Lane, Virginia Beach, Virginia 23462. My qualifications as an expert in mapping are attached hereto as Attachment A and made a part hereof by reference.

I have examined a 7.5 minute topographic map and the maps attached hereto as Attachment B.

Based upon the Latitude of $37^{\circ} 12' 30''$ N and a Longitude of $76^{\circ} 25' 05''$ W, I have plotted this location on a paper copy of the 7.5 minute topographic map. Using the paper copy of the 7.5 minute topographic map, I agree that this location appears to lie within the water as also determined by Tidewater Communications, LLC's, consulting engineer.

I have also gone on-line to the mapserver.maptech.com site. This is a commercial mapping service, and not a United States government website. The maptech.com site appears to suggest that the same Latitude and Longitude location is indeed on dry land. The maps shown on this site were scanned from paper copies of their respective 7.5 minute maps and geo-referenced as accurately as possible. However, they do display some error at some of the grid tick marks. The plotted position derived from our plotting this position on a paper copy of the 7.5 minute topographic map does appear to be approximately 100' eastward from the position as shown on the mapserver.maptech.com site.

Please note that the precision of the Latitude and Longitude values are described to the nearest second. 1-second of Latitude equates to 100-ft +/- and 1-second of Longitude equates to 82-ft +/-, so the location could actually be 40-50 ft off from the actual position when plotted on any representation of the 7.5 minute topographic map.

Both the 7.5 minute paper map and the digital map as shown on the mapserver.maptech.com site should be regarded as "visual tools" and should not be relied upon for absolute positional accuracy for any physical locations.

Executed this 29th day of December, 2003.


Donald W. Shackelford

Attachment A

Donald W. Shackelford, L.S.
Rouse-Sirine Associates, Ltd.



Project Assignment: Director of GPS Operations / Project Surveyor

Registrations: Professional Land Surveyor: Virginia, North Carolina, Maryland

Professional Affiliations: Virginia Association of Surveyors

Years Experience: 27

Mr. Shackelford serves as the Director of GPS Operations. His experience includes all phases of land surveying during his 27 years in the surveying profession with proven effectiveness as a project surveyor on many projects.

Projects in which Mr. Shackelford served as the project surveyor in charge of the project and the GPS services include:

GPS Geodetic Control

- X U.S. Naval ROTHRA Antenna Sites, Juana Diaz & Vieques, Puerto Rico
- X County of Mathews 1999 Supplemental Geodetic Control Network
- X City of Suffolk 1999 Supplemental Geodetic Control Network
- X City of Richmond 1999 Geodetic Control Network

Topographic Surveys

- X Gates 2 and 3A, Security Gate Fencing, Norfolk Naval Station, Norfolk, VA
- X SIMA Building Improvements, Norfolk Naval Station, Norfolk, VA
- X P982 General Storage Warehouse, Norfolk Naval Station, Norfolk, VA
- X Pest Control Facility, Norfolk Naval Station, Norfolk, VA
- X P-280 AIMD Consolidation Project, Norfolk Naval Station, Norfolk, VA
- X New Boat Storage Area, Norfolk Naval Station, Norfolk, VA
- X Drydock No. 8 - Norfolk Naval Shipyard, Portsmouth, VA
- X Nuclear Training Facility, Norfolk Naval Shipyard, Portsmouth, VA
- X P390T Shiploading Training Facility, Little Creek Naval Amphibious Base, Norfolk, VA
- X Seal Team Operations Facility, Little Creek Naval Amphibious Base, Norfolk, VA
- X Waterfront Operations Building, Little Creek Naval Amphibious Base, Norfolk, VA
- X Hanger 23, Oceana Naval Air Station, Virginia Beach, VA
- X Repairs to Runways 5L23R & 5R23L, Oceana Naval Air Station, Virginia Beach, VA
- X Craney Island Supply Center Wastewater Facilities Upgrade
- X Voice of America Relay Antenna Site, Island of Tinian, US Navy Property

Boundary surveys

- X Powhatan County/Chesterfield County Common Boundary Survey
- X Chesapeake/Suffolk Common Corporate Boundary Survey

Attachment B

Navigational Photo

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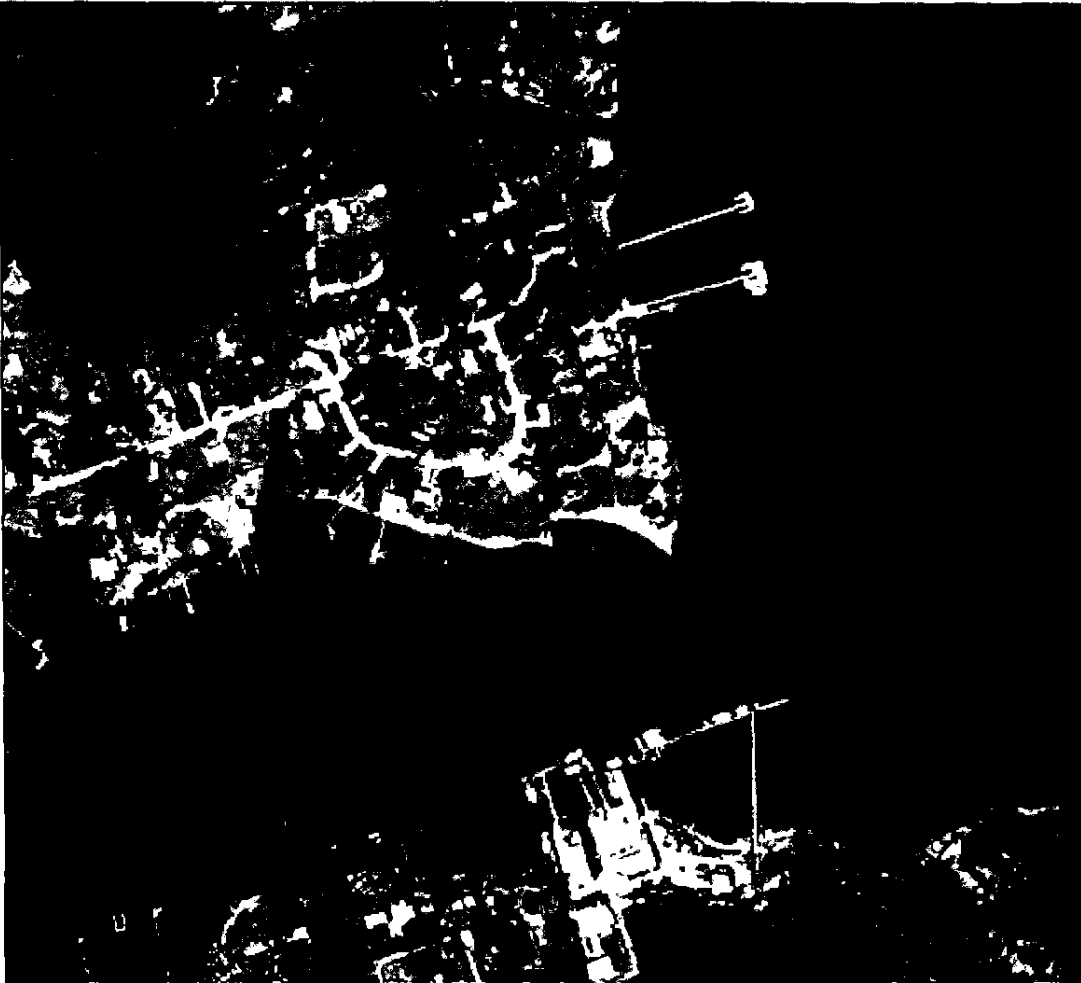
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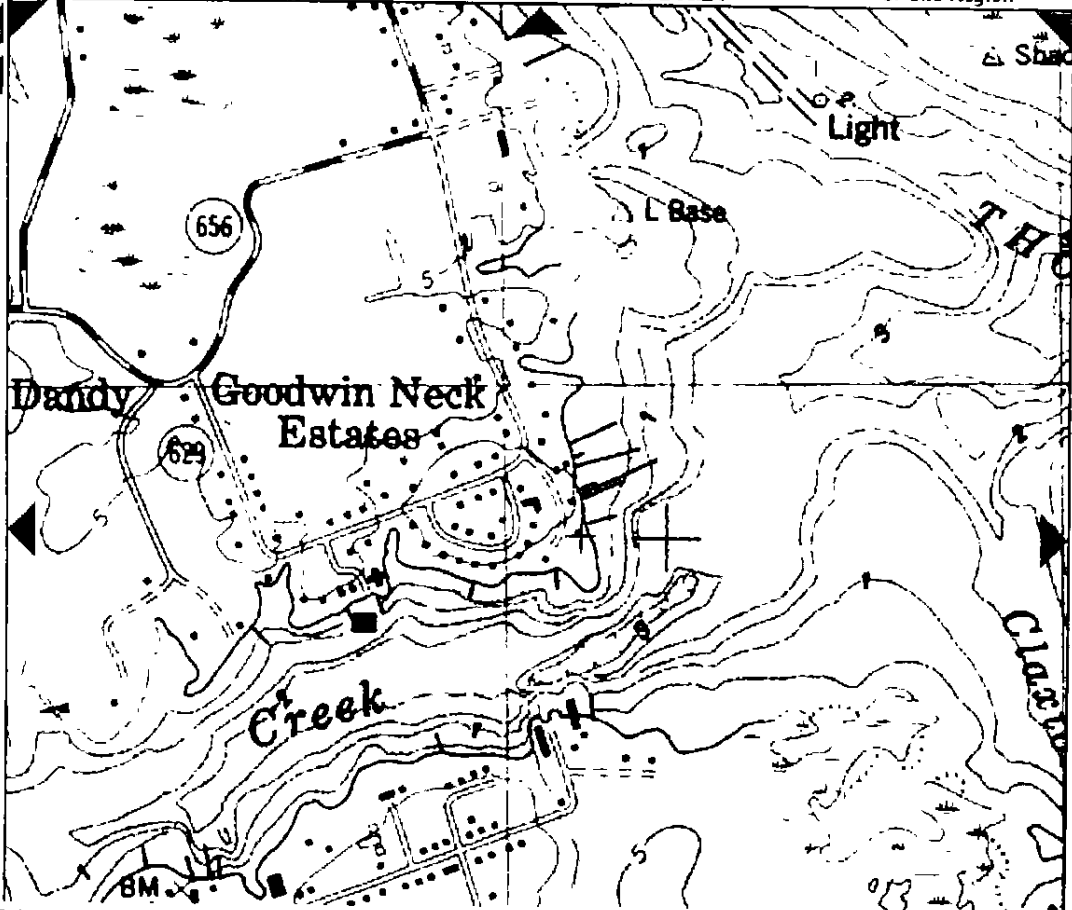


Exhibit C

David F. Maune, Ph.D., CP, CFM

Mapping and Remote Sensing Consultant

7131 Lake Cove Drive

Alexandria, VA 22315

Tel (703) 849-0396

Fax (703) 849-0182

E-mail dmaune@dewberry.com

December 18, 2003

Mr Gary S. Smithwick
Smithwick & Beleduk, P.C.
5028 Wisconsin Avenue, N.W., Suite 301
Washington, D.C. 20016

Dear Mr. Smithwick,

As a follow-on to yesterday's telecon regarding the proposed transmitter site, I am enclosing the Corpscon printout for the conversion of the geographic coordinates into Universal Transverse Mercator (UTM) coordinates for which 1000-meter UTM grid lines are shown on the topographic map POQUOSON WEST. I hope you will find this helpful.

The site in question is at 37° 12' 30" north latitude, 76° 25' 05" west longitude. This converts to UTM coordinates of 4,118,721.91779 meters N, 374,165.49625 meters E, in UTM Zone 18.

To position this site on the USGS 7.5-minute topographic quad map, the northing is easy because it is exactly at the same northing as the "+" sign in the water, just east of the point in question. That "cross hair" shows the location of 37°12' 30" N and 76°25' 00" W. Note that longitude values in the western hemisphere increase in the westerly direction, so that 76°25' 05" is west of this cross hair in the water, but UTM coordinates increase in the easterly direction worldwide.

The exact location of the coordinate on the map can be determined using an engineer's scale, and interpolating between the UTM 1000-meter grid lines between the ³⁷⁴000 meter vertical grid line left of the point in question (just right of the "k" in Goodwin Neck Estates) and the ³⁷⁵000 meter vertical grid line farther to the right of the point in question. Since this is a 1000 meter grid, only the 74 and the 75 are in bold on the map because they represent thousands of meters. Since the easting coordinate that you want is 374,165.49625, you need to use an engineer's scale to interpolate 165 of the distance between the 74 UTM grid line on the left and the 75 UTM grid line on the right. That places the point slightly in the water, at the northing equal to the "+" in the water.

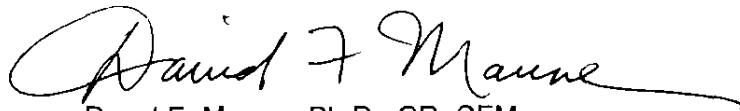
There are several potential error sources in this process. The USGS quad map is at a scale of 1:24,000 or 1" = 2000'. The allowable horizontal error of mapped features is 1/30th of an inch at map scale, i.e., 66.7 ft at the 90% confidence level. Digital raster

graphics (DRGs) produced from these maps, and commonly used in web sites, have this same accuracy as they are produced from the original reproducible materials that do not change dimensions with changes in temperature and humidity

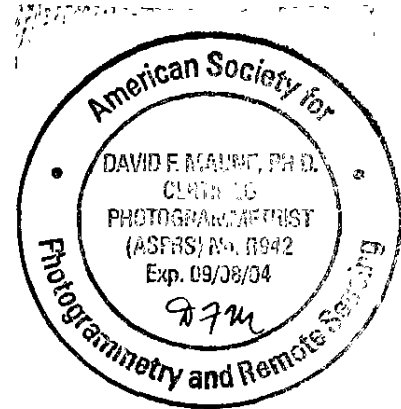
Secondly, the coordinates provided for the proposed site are to the nearest whole second of arc. One arc second equals more than 100 feet at the equator, enabling one to roam the web site image over a distance of about 100 feet east or west without the longitude changing from 76° 25' 05" to either 04" or 06"

I hope you will find this information helpful. If I can be of further service, please call me at (703) 849-0396

Sincerely,



David F. Maune, Ph.D., CP, CFM
Mapping and Remote Sensing Consultant



12/16/2003

Input

Horizontal: NAD 27 Geographic

Vertical NGVD 29, U.S. Survey Feet

Output

Horizontal NAD 27 UTM, Zone 0018, Meters

Vertical NAVD 88, U.S. Survey Feet

| Name | Input | Output |
|-----------------|------------------|-----------------|
| | 37 12 30.00000 N | 4118721.91779 N |
| | 76 25 05.00000 W | 374165.49625 E |
| Elevation | 0.00000 | -1.18 |
| Convergence | | -00 51 27.47494 |
| Scale Factor | | 0 999795055 |
| Combined Factor | | 0.999795111 |

Navigation Photo

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i3

Innovative
Intuitive
Integrated

Latitude 37° 12' 30" N
Longitude 76° 25' 05" W
Coordinates DMS
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Topographic Map

Maptech MapServer - Online Topo Maps, Nautical Charts, Aero Charts, and Nav Photos - Microsoft

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ENTER CITY OR PLACE NAME
SELECT STATE Go!
OR ENTER ZIP CODE Go!

Coming...
i3
Innovative
Intuitive
Integrated

Latitude 37° 12' 30" N
Longitude 76° 25' 05" W
Coordinates DMS

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11:48 AM

CERTIFICATE OF SERVICE

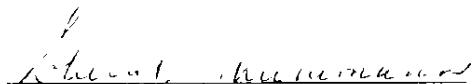
I, Sherry L. Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., do hereby certify that on this 31st day of December, 2003, copies of the foregoing "Reply to Consolidated Response to Petitions for Reconsideration" were mailed by First Class U.S. Mail, postage prepaid, to the following.

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Sherry L. Schunemann